IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.1676 of 2001 (MS)

Vidya Bhusan Gupta (Since deceased)
1. Smt. Vinita Gupta w/o late Sudarshan Gupta
2. Kunal Mahajan s/o late Sudarshan Gupta
3. Anirudh Mahajan s/o late Sudrashan Gupta
4. Km. Gesu Mahajan d/o late Sudrashan Gupta
5. Smt. Anu Gupta w/o late Ravi Kant
6. Km. Swati Mahajan d/o late Ravi Kant Gupta
7. Km. Megha Mahajan (minor) through mother Smt. Anu Gupta.
8. Master Nikhil (Minor) through mother Smt. Anu Gupta.

All petitioners c/o Sri Rajiv Sharma, Katha Sadan, Chiliya Nula, Ranikhet, District Almora. ..... Petitioners

Versus

1. Sub Divisional Magistrate/Prescribed Authority, Ranikhet.
2. Harish Chandra Agrawal s/o late Luxmi Narayan Agarwal, resident of House no. 820, 820-A, Gandhi Chawk, Ranikhet
3. Hem Chandra Joshi s/o Pandev Joshi R/o Gandhi Chowk Ranikhet, Almora .....Respondents.

Sri V.K. Bisht, Sri Advocate assisted Sri Pradeep Lohani for the petitioner.

Sri N.S. Negi, Advocate for respondent no.3.

Dated: 12.6.2006

Hon'ble Rajesh Tendon, J.

The present writ petition has been directed against the orders dated 25.2.2000 and 19.6.2000 passed by the respondent no. 1, by which the vacancy of the premises has been declared and also the review sought against the vacancy order.

Briefly stated the respondent no. 2 moved an application before the Prescribed Authority, Ranikhet under section 12(1)(a) of the U.P. Act No. 13 of 1972 for declaring the house of the petitioner vacant on the ground that the petitioner has left the house. According to the petitioner no notice whatsoever has been served upon him regarding the proceedings pending before the Prescribed Authority. The petitioner has alleged that the respondent without recording any finding that the petitioner has substantially left the house or removed his effect from the building in question passed the impugned order. On 6.3.2000 the petitioner filed application for setting aside the ex parte order dated 25.2.2000 which was rejected on 19.6.2000.

In the mean time against the release order the petitioner has filed a revision before the District Judge, Almora. The petitioner has also challenged the order of vacancy. The District Judge has rejected the revision vide order dated 7.8.2001 on the ground of limitation. Against the order of the District Judge, the petitioner filed a writ petition No. 751 of 2002 (MS) before this Court and this Court on 22.11.2004 passed the following order:

"In the circumstances, the writ petition is allowed to the extent that the order dated 7.8.2001 passed by learned District Judge, Almora is quashed. The delay in moving the revision against the order dated 12.02.2001 passed by the Prescribed Authority, Ranikhet, is condoned. This Court, declines to quash the order dated 12.2.2001 on the ground that the merits and revision filed by the tenant. Accordingly, the writ petition is partly allowed. No order as to costs.

Thus as the merits and legalities of the impugned order has been directed to be seen by the District Judge, in the revision, this writ petition has become infructuous and deserves to be dismissed.

Accordingly, writ petition is dismissed. No order as to costs.

Dated: 12.6.2006 **Rajesh Tandon, J.**
*Dhyani